IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 147 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 Yes
2 to 5 No

COMMISSIONER OF INCOME TAX

Versus

PATSON TRANSFORMERS PVT. LTD.

Appearance:
MR BB NAIK for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 02/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

In this reference, the only question which calls for our opinion is with regard to the applicability and interpretation of the provisions of sec. 80-J(4)(ii) of the Income-tax Act, 1961 (I.T. Act). This reference is

at the instance of the revenue against the respondent, original assessee company. The relevant assessment years involved in the reference are of 1975-76 and 1976-77.

2. The assessee company was engaged in manufacturing transformers and transformer oil at the relevant time. It had two divisions, known as Transformer Division for manufacture of transformers and Chemical Division, for transformer oil. The assessee company claimed the benefit of aforesaid provision of sec. 80-J(4)(ii) in respect of both the divisions for the aforesaid assessment years, whereas, the concerned ITO, while granting and admitting the assessee company's claim to the benefit of deduction for relief u/s 80-J in respect of Chemical Division, rejected the claim for such a relief in respect of Transformer Division, inter alia, holding that the machinery used by Transformer Division had been previously used and, therefore, the claim of the assessee company for the benefit of sec. 80-J cannot be sustained in view of the provisions of sec. 80-J(4)(ii) of the I.T. Act.

3. Being not satisfied by the assessment of the ITO, the assessee company preferred an appeal before the Commissioner of Income-tax (Appeals), unsuccessfully. However, when the matter was carried before the Appellate Tribunal, the claim of the assessee, for the deduction of liability in respect of Chemical Division, the matter was remitted to the appellate authority for fresh consideration, in view of the pending case before the Supreme Court, with regard to the retrospective amendment in the aforesaid provision. However, insofar as claim u/s 80-J(4)(iv) was concerned, the Tribunal upheld the order of the appellate authority and held that the assessee company was entitled to claim the relief u/s 80-J(4)(ii). In regard to the other claim of deduction of liabilities, the Appellate Tribunal remitted the matter to the first appellate authority to decide in accordance with the decision of the Supreme Court. Thus, it becomes clear from the record that insofar as the Chemical Division of the assessee company was concerned, the remand order is not under challenge, whereas, the Appellate Tribunal, at the instance of the revenue, has made a reference for decision of this Court, on the following question of law.

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessee was entitled to claim relief u/s 80-J(4) in respect of transformer division for the assessment years

in question?"

4. We have heard the Learned Counsel for the revenue and have examined the entire record for the purpose of adjudication of the reference, as the opponent assessee company has not chosen it fit to appear and contest, though duly served.

5. In our opinion, the Appellate Tribunal's view is not justified in view of the plain provisions of sec. 80-J(4)(ii) of the I.T. Act. Sub-sec. (4) of sec. 80-J of the I.T. Act provides 4 conditions, upon the fulfillment of which, an industrial undertaking becomes entitled to claim the relief of deduction u/s 80-J. We would, therefore, like to refer to the relevant provisions of sec. 80-J(4) (as they stood then).

"Sec. 80-J (4) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-

(i) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces articles, or operates one or more cold storage plant or plants, in any part of India, and has begun or begins to manufacture or produce articles or to operate such plant or plants, at anytime within the period of thirty three years next following the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(iv) in a case where the industrial undertaking manufactures or produces articles, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power."

6. It becomes quite clear from the aforesaid provisions of sub-sec. (4) of sec. 80-J that, in order to qualify for the relief u/s 80-J, an industrial undertaking must fulfil all the four conditions. Condition No. 2 clearly prescribes that, in order to be eligible for the relief u/s 80-J, and for the applicability of this provision, the machinery or the plant used in the industrial undertaking must not have been previously used for any purpose. It is clear from the record that the machineries installed and used in the Transformer Division by the assessee company, were also used in the Chemical Division of the assessee company itself. Not only that, the assessee company itself had successfully claimed the relief of deduction u/s 80-J in respect of the same machineries, insofar as the Chemical Division of the assessee company was concerned, for the previous two years prior to the assessment years in question. Therefore, there is no any doubt that condition No. (ii), as aforesaid, which is an integral part of sub-sec. (4) of sec. 80-J of the I.T. Act, had not been complied with. One or more condition, if not complied with, would obviously lead us to a positive conclusion that the section itself did not apply. For applicability of the provisions of sec. 80-J, in case of an industrial unit, as per the provisions of sub-sec. (4), all the aforesaid four conditions must co-exist. This aspect, unfortunately, has not been examined in its correct and legal spirit by the Appellate Tribunal, which has resulted into quashing of the rightful conclusion recorded by the first appellate authority. Not only that, it has also culminated into manifest error of law apparent on the record and miscarriage of justice. Therefore, while exercising our powers u/s 256 of the I.T. Act, we are left with no alternative but to record our opinion in favour of the revenue and against the assessee.

7. Accordingly, we answer the question referred to us in affirmative, that is, in favour of the revenue and against the assessee. There shall be no order as to costs.

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